



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,325	10/12/2007	Steven P. Getz	ANMS-176US	9819

27777 7590 08/09/2010
PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

EXAMINER

KUNDU, SUJOY K

ART UNIT	PAPER NUMBER
----------	--------------

2863

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

08/09/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jnjuspatent@corus.jnj.com
lhowd@its.jnj.com
gsanche@its.jnj.com

Office Action Summary	Application No. 10/584,325	Applicant(s) GETZ ET AL.	
	Examiner SUJOY K. KUNDU	Art Unit 2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-22 is/are allowed.
- 6) ☒ Claim(s) 1-11 and 23-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>06/26/2006; 11/13/2007; 11/13/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

Foreign references cited in IDS (11/13/2007) not considered since Foreign references are not provided.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 1 is directed towards a method for detecting an occlusion, the claim does not seem to be tied to a particular machine or transform a particular article (In re Bilski, F.3d (Fed. Cir. 2008) (en banc)).

As explained in the Interim Guidelines, the first step in determining whether a claim recites patent eligible subject matter is to determine whether the claim falls within one of the four statutory categories of invention recited in 35 USC 101: process, machine, manufacture, and composition of matter. The latter three categories define "things" or "products," while a "process" consists of a series of steps or acts to be performed. For purposes of 35 USC 101, a "process" has been given a specialized, limited meaning by the courts.

Based on recent Federal Circuit decisions, a 35 USC 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state of thing. If

Art Unit: 2863

neither of these requirements is met by the claim, the method is not a patent eligible process under 35 USC 101, therefore claim 1 is directed towards nonstatutory subject matter.

Claims 23-33 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims are drawn to a "computer readable medium". The broadest reasonable interpretation of a claim drawn to a computer readable medium covers forms of non-transitory tangible media and transitory propagating signals *per se* in view of the ordinary and customary meaning of computer readable media, particularly when the specification is silent (see MPEP 2111.01). Because the broadest reasonable interpretation covers a signal *per se*, a rejection under 35 USC 101 is appropriate as covering non-statutory subject matter. See 351 OG 212, Feb 23 2010.

The Examiner suggests that Applicant amends the claims as follows: "non-transitory computer readable medium containing computer instructions stored therein for causing a computer processor to perform".

Pertinent Art Cited

Das et al. (US 2002/0128594) teaches a piston-type infusion pump is provided having an improved method of occlusion detection. The infusion pump includes processing circuitry for controlling the drive mechanism to infuse medication to a patient, including a sensor to track the position of the syringe plunger, thereby metering the amount of medication dispensed to the patient. The processing circuitry also includes a force sensor for providing signals indicative of the presence of occlusions

Art Unit: 2863

along the infusion path. The operation of the drive mechanism causes delivery of medication to the patient. The infusion pump is constructed to be watertight.

Allowable Subject Matter

Claims 12-22 are allowed.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance: With regards to Claim 12, the prior art of record or any combination of prior art searched fails to teach the limitations of wherein the processing unit is operative to receive a signal corresponding to a first force needed to deliver a first material; indicate that an occlusion exists if the first force is greater than a baseline value plus a delta value; set, if the first force is less than or equal to the baseline value plus the delta value, and if a turbulence factor is less than a threshold value, the baseline value equal to a second force.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUJOY K. KUNDU whose telephone number is (571)272-8586. The examiner can normally be reached on M-F 9-5.

Art Unit: 2863

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on 571-272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sujoy K Kundu/
Primary Examiner, Art Unit 2863
August 3, 2010